



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for the cost of carpet replacement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages?

Background

The landlord testified that the tenancy began on April 30, 2013. The rent was \$1,600.00. A security deposit of \$800.00 and pet damage deposit of \$200.00 were paid. The landlord testified that the tenant vacated in on February 15, 2014. The landlord testified that the tenant provided a written forwarding address at the end of the tenancy but the tenant's security deposit was not refunded because the landlord seeks compensation for replacement of a portion of the carpeting on the stairs and in one bedroom because these areas of the carpeting were allegedly frayed by the tenant's cat.

Submitted into evidence was a copy of the tenancy agreement, copies of communications, witness statements, a report from a carpet expert, copies of receipts, and photos.

Also submitted into evidence were copies of the move-in and move-out condition inspection reports signed by the parties. The move-out condition inspection report indicated that the rental unit was left reasonably clean and undamaged.

The landlord acknowledged that the parties had jointly inspected the rental unit, each accompanied by their own witness and all agreed that there were no issues with the condition of the unit.

The landlord testified that, shortly after the tenant and the witnesses left, the landlord's carpet cleaner discovered previously undetected damage to a portion of the carpet on the stairs and in one bedroom. The carpet cleaner's invoice specifically mentions that the carpet on the stairs and in the master bedroom was "*cat shredded*".

The landlord had the carpet inspected and a report issued by a professional flooring consultant on March 26, 2014 indicates:

"Carpet is frayed and there is urine in the carpet"

The report concluded ,

"The fuzzing/fraying of the carpetis consistent with either a pet claws or vacuum cleaner nozzle unraveling the yarns/fibres, in these areas."

Stated under the heading "*IDENTIFICATION OF CAUSE*" is the comment, "*Improper care and maintenance of the carpet*".

The landlord feels that the tenant is responsible for damaging the carpet, despite the fact that the move-out condition inspection report found the condition satisfactory.

The landlord's position is that the carpet is only two years old and therefore the damage is not due to normal wear and tear. The landlord stated that the fraying of the carpet is so severe that it requires replacement of the damaged areas and the tenant must compensate the landlord for this cost. The landlord submitted a copy of an estimate for \$1,352.82.

The landlord testified that, once the damage was discovered, they immediately contacted the tenant to discuss compensation. However, the tenant was not receptive to meeting or discussing the possibility of giving compensation to the landlord for the newly discovered damage.

The tenant is disputing the landlord's claim and pointed out that this carpeting already had pre-existing condition issues when the tenant moved in. The tenant pointed out that there was a previous dispute resolution hearing on an application filed by the tenant during the tenancy relating the tenant's complaint that the carpet was contaminated by

dog urine before the tenant moved into the unit . The tenant had filed seeking orders to force the landlord to replace the carpet and compensate the tenant, but was not successful.

The tenant also pointed out that, before this tenancy commenced, the landlord's dog had apparently destroyed a section of the carpet which had been patched prior to the tenancy.

The tenant stated that they cooperated in completing a thorough move-out condition inspection jointly with the landlord and with witnesses present, which was signed and the tenant feels that this report stands on its own merit.

The tenant's position is that the landlord's claim that the carpet was significantly damaged to the extent that it requires replacement, is not supported by the fact that the alleged fraying of the carpet had apparently gone completely unnoticed by all four people present during the move-out condition inspection.

The landlord is seeking a monetary order for the cost of new carpets, to keep the tenant's security and pet damage deposits in partial satisfaction of the claim and reimbursement for the \$50.00 cost of the application.

The landlord is also seeking compensation for hydro services for two weeks in February, 2014, during which the tenant resided in the unit. No documentation relating to the claimed hydro costs was submitted into evidence.

Analysis:

In regard to an Applicant's right to claim damages from another party, Section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,

3. Verification of the actual amount of the expenditures incurred to rectify the damage or loss, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Section 21 of the Residential Tenancy Regulations states that, in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find that the landlord's move-out condition inspection report does not clearly establish that the carpets were damaged in any way, nor that they needed to be cleaned or replaced.

I also note that the space on the report reserved for comments:

“Z. Damage to rental unit or residential property for which the tenant is responsible:”

which is located at the bottom of the move out condition inspection report, does not contain any comments about purported damage to the carpets or any other part of the unit.

In this instance, I find that the landlord provided a subsequent report from a carpet expert into evidence supporting the landlord's contention that the damage to the carpet was so severe in places, it necessitates replacement of the carpet. At the same time, I find that none of the parties involved in the move out condition inspection apparently noticed this severe damage.

In addition to the above, even if I accept that the carpets were genuinely in need of repair, I would still have to determine whether the landlord has successfully proven that the tenant is solely responsible for causing this damage during the tenancy.

Given that a pet had previously resided in the same unit prior to the start of this tenancy and the fact that the tenant had initially raised her own concerns about condition issues relating to some areas of the carpet during the tenancy, I find that I cannot conclude that the tenant caused the damage and that the tenant should be responsible for the cost of replacing the carpet.

Based on the landlord's evidence, I find that the applicant has not adequately met the burden of proof required to prove the claim. Accordingly, I find that the landlord's application must be dismissed. , I hereby dismiss the landlord's application in its entirety without leave to reapply.

I therefore find that the landlord is not entitled to retain the tenant's \$800.00 security deposit nor the \$200.00 pet damage deposit, still currently being held in trust for the tenant. I order that these deposits must be refunded to the tenant forthwith.

Accordingly, I hereby grant the tenant a Monetary Order for the return of the security and pet damage deposits in the amount of \$1,000.00. This order must be served on the respondent and, if unpaid, an application may be filed in Small Claims Court to enforce the order.

Conclusion

The landlord's application and monetary claim is dismissed in its entirety without leave to reapply and a monetary order issued to the tenant for the return of the security and pet damage deposits.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 11, 2014

Residential Tenancy Branch

